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THE CITY AND COUNTY IN MASSACHUSETTS

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Massachusetts is a pioneer in municipal reform. She has given and is giving most careful attention to the problems of city government. But the same degree of attention and wise consideration have not been extended to the county. Outside of New England the numerous powers exercised by the county have often given rise to evils, but in Massachusetts the problem grows out of the insignificance of the county. There the county is the *neglected* organ of government. Reforms which are considered fundamental for good city government have not been adopted for the county. For example: the civil service laws which so efficiently regulate the appointments to city positions do not apply to the county, and furthermore, for some inscrutable reason, the county entirely escapes the legal tax limit imposed on the city.

The county problem in municipal affairs in Massachusetts presents three aspects:—I. The county problem in relation to the cities in general. II. The relation of the city of Boston to Suffolk county. III. The relation of the county to the problem of a metropolitan union.

The county¹ in Massachusetts is a quasi corporation created by the state legislature² mainly for judicial purposes. County boundaries are arranged and county government is organized with the view to facilitating the administration of justice by the commonwealth rather than with intention of creating a unit of local government.³

As an organization for the administration of justice, the county is merely a judicial district of the state. The administration of justice is vested partly in the supreme judicial court, and partly in the superior court, the judges of which hold sessions in the several counties; partly in a probate court in each county; and partly in district and police courts,⁴ for which purposes the counties and cities are districted.

¹ There are fourteen counties in Massachusetts.

² There are no constitutional restrictions on the control of the legislature over the county.

³ Compilation of laws relating to counties and county commissioners prepared under the direction of the Middlesex county commissioners May, 1911, p. 7.

⁴ In Boston they are termed "Municipal Courts"; for example, "Municipal Court, Roxbury District," etc.

The judges and justices of these courts are appointed by the governor and paid by the commonwealth, with the exception of the justices of the district and police courts, who are paid by the county. Since the administration of justice is primarily a state function, the question of a conflict of jurisdiction between the city and county does not arise in that connection.

The problem of the conflict of jurisdiction and the duplication of functions between the city and the county in Massachusetts, so far as it exists, arises out of the exercise by the county of certain functions of local government. County administration in its relation to municipal affairs in Massachusetts does not present those insistent problems which frequently exist in states outside of New England where the county is a more important local administrative unit. In Massachusetts the city and the town are the all important units of local government. The relatively unimportant position of the county is largely responsible for a deplorable lack of interest as well as lack of information concerning those functions actually exercised by the county government. An active interest in county affairs appears to be lacking, not only among the mass of voters, but even among the more public spirited members of the community.⁵

The county administration is exercised, chiefly, by a group of officials elected at large by the voters of the county. The group comprises three county commissioners, sheriff, treasurer, register of deeds, register of probate, district attorney, and clerk of the courts. The last three named, however, are primarily judicial rather than administrative officers.

The chief local administrative functions of the county are vested in the board of county commissioners.⁶ The county commissioners affect the interests of the city through the exercise of both financial and quasi judicial functions. As the financial agents of the county, the commissioners draw up the annual budget, levy and apportion taxes for county purposes, and supervise the expenditure of county funds.⁷ Sitting as a court the commissioners may hear and determine

⁵ The lack of interest is illustrated by the following typical answer to questions concerning county administration submitted by the writer to prominent men in Massachusetts: "The problem of county administration amounts to so little that we really hardly take any account of it."

⁶ One commissioner is elected each year for a term of three years.

⁷ Revised Laws, chap. 21, sec's. 25-34.

petitions for abatement of taxes,⁸ sewer assessments and the like.⁹ Their jurisdiction, except where special acts or city charters provide otherwise, also extends to the city in certain matters relating to highways and railroads, particularly in questions arising from the crossing of a highway by a railroad.¹⁰ They may likewise hear and determine appeals from the board of health in a city in case of the refusal of the board to abate a nuisance.¹¹

That part of the system of county government in Massachusetts most subject to criticism is the irresponsible position of the county commissioners. The comparatively few¹² administrative functions vested in them are exercised without due publicity or adequate supervision. The official acts of these officers escape, almost entirely, the scrutiny of the public. The average voter naturally limits his interest in local government to the city or town, which is the authority responsible for taxes, while probably not one citizen in five hundred comes into direct contact with the county commissioners.¹³ Thus, although popularly elected, they are too far removed from the people to be held sufficiently responsible.

Under such favorable circumstances strongly entrenched party organizations known as "county rings" have developed, whose objects appear to be the perpetuation of their members in office and the

⁸ Appeals from city or town assessors, Revised Laws, chap. 12, sec. 77; chap. 14, sec. 39, Acts, 1909, chap. 490, pt. III., sec. 76.

⁹ Appeals from mayor or aldermen, or sewer commissioners. Revised Laws, chap. 49, sec. 7; chap. 50, sec. 12.

¹⁰ County commissioners may, with the consent of the state railroad commissioners, authorize the laying out of a railroad across a public way. Acts, 1906, chap. 463, pt. II., sec. 111.

They may issue a decree permitting the railroad corporation to raise or lower a highway. Acts, 1906, chap. 463, pt. II., sec. 109.

They may authorize the alteration of the course of a highway to prevent a railroad crossing it, or for the "purpose of facilitating the crossing thereof." Acts, 1906, chap. 463, pt. II., sec. 110.

They "have original jurisdiction of questions relative to obstructions to highways . . . caused by the construction or operation of railroads." Acts, 1906, chap. 463, pt. II., sec. 117.

They may hear petitions of the aggrieved concerning the location of a railroad and may order a change of location. Acts, 1906, chap. 463, pt. II., sec. 92.

¹¹ Revised Laws, chap. 75, sec. 84.

¹² Few in comparison with those exercised by county commissioners in many other states.

¹³ An opinion expressed to the writer by a Boston attorney and state representative of wide experience.

distribution of appointive positions for party or personal advantage. The ends of the "ring" are furthered by the lack of publicity and proper accountability surrounding the position of the county commissioners, and especially by the lack of any civil service laws such as regulate the appointments to office in the cities of Massachusetts. These conditions, it is alleged, result at times in the election of incompetent officials and tend to put in office men who have passed their day of usefulness.

Another common ground of complaint is the inadequate supervision of expenditures made by the county commissioners. Such legal supervision as existed prior to 1895 was exercised by the legislature through the committee on county estimates. This committee, which was considered the most unimportant in the house, is said to have perfunctorily accepted the unitemized estimates of the county commissioners, which the legislature just as perfunctorily approved. During the sessions of 1895 and 1896, however, a series of statutes were enacted which had for their object the creation of adequate checks on county expenditures. In pursuance of those acts itemized estimates of expenditures are submitted by the county commissioners to the controller of county accounts, who analyzes and classifies the items and reports them to the legislature. Copies of the report are also sent to the mayors of the cities and the selectmen of the towns in the commonwealth.¹⁴ The legislature takes final action on the report only after receiving the recommendations of a joint committee of the house and senate on counties, which meanwhile has given a series of public hearings.

This legislation has without doubt improved the situation, but it is claimed that the desired end is not even yet entirely attained. Although it is probable that the efficient administration of the existing law would provide an effective check upon county expenditures, the indifference to county affairs on the part of the public is said to have resulted in lax enforcement. Because of the apparent lack of public interest no effective, continuous pressure is brought to bear on the legislature sufficient to cause it to scrutinize carefully the county budget. A representative of long experience stated to the writer that, notwithstanding the admirable laws, the oversight of county finances by the legislature is still to a deplorable extent a perfunctory procedure.

The office of the sheriff likewise meets with no little criticism.

¹⁴ Revised Laws, chap. 21, sec. 27.

The sheriff acts not only as a court official but is also partly responsible for the administration of jails and houses of correction, the keepers and masters of which are appointed by him. Students of the prisons problem and persons interested in social reform claim that grave evils arise from the present county administration of prisons and houses of correction which, they assert, is not only inefficient but often vicious. The Massachusetts prison association considers the administration of jails by the county a "most curious governmental remnant of a past age."¹⁵ The Massachusetts civic league believes the jails of Massachusetts are among "our most successful schools of crime."¹⁶

Of the register of deeds and the register of probate little criticism is heard. Their official duties bring them into daily touch with the public. Hence their efficiency as public officials may be tested by the individual voter to a degree not possible in the case of the county commissioners or the sheriff.

Those interested in the situation are by no means agreed concerning the nature of remedial measures required, or the amount desired. Certain men of wide experience argue that the chief administrative functions now exercised by the county government could be exercised more advantageously by the state, while the judicial functions exercised by the county commissioners could well be transferred to the superior court. Indeed some would go so far as to abolish county government completely, retain county lines merely for judicial and registry districts, transfer the administrative functions to state commissions and vest in the governor, who now appoints the judges, the power to appoint the remaining county officers. Others, however, believe that the changes proposed above would be detrimental. Government by state commissions, they assert, is a violation of the time-honored principles of local self-government, while the courts, they argue, are already too crowded and their procedure too formal to efficiently dispose of the cases now adjudicated by the county commissioners.

Although there is a somewhat undefined feeling on the part of the public that the county government is not all that it should be, while it is not uncommon to find that city officials¹⁷ ill-disposed toward the

¹⁵ Massachusetts Prison Association, No. 36.

¹⁶ Massachusetts Civic League, Report 1911, p. 10.

¹⁷ Especially in case the "city hall" is of opposite political faith to the "county ring."

county government, and while a few public-spirited citizens advocate reform yet the apparent general lack of interest in the matter makes it doubtful whether any essential change in the relations of the city to the county may be expected in the near future.

Boston has gone a long way toward eliminating the county problem in her municipal affairs. The relation of the city of Boston to the county of Suffolk is unique among the cities of Massachusetts. It is Boston's good fortune to exercise practically all the functions vested in both city and county governments in Massachusetts. This favorable situation was inaugurated by the acts of the Massachusetts legislature in 1821-22 which transformed the town of Boston into a city.¹⁸ The town of Boston had suffered from a conflict of jurisdiction between the town authorities and the county court of sessions concerning such matters as taxation and highways. The evil was eliminated at the creation of the city by the abolition of the court of sessions for Suffolk county and by transferring its administrative functions to the mayor and aldermen of Boston.¹⁹ These county functions were chiefly those which were later vested in the county commissioners in counties other than Suffolk.

Suffolk county is composed of the cities of Boston and Chelsea, and the towns of Revere and Winthrop. The relations of these municipalities to one another and to the county of Suffolk is largely the result of the conditions existing at the time when Boston became a city.²⁰ Chelsea, Revere and Winthrop are considered a part of Suffolk county for the purpose of the administration of justice and the election of officers to those county offices which exist in Suffolk county.²¹ For purposes relating to the jurisdiction of the county commissioners, however, Revere and Winthrop are under the authority of the commissioners of Middlesex county, and the electors of those towns vote for commissioners of that county, while in Chelsea the aldermen of that city exercise in most cases the functions of county commissioners.²² Chelsea, Revere and Winthrop have no share in the ownership of the property of Suffolk county. The ownership of, and the jurisdiction

¹⁸ Acts, 1821, chaps. 109-110.

¹⁹ Acts, 1821, chap. 109.

²⁰ Revere and Winthrop were then a part of Chelsea.

²¹ District attorney, clerks of the courts, sheriff, register of probate, register of deeds.

²² Revised Laws, chap. 20, sec. 34.

over, all county property, both real and personal are vested exclusively in the city of Boston. At the same time those municipalities are freed from taxation for county purposes, since the entire county expenses are by law charged to the city of Boston. For judicial purposes, Suffolk county has the organization common to all Massachusetts counties with the important exception that the city of Boston bears all the expenses²³ of the judicial administration of the entire county.

Prior to the adoption of the city charter of 1909 the aldermen of the city of Boston exercised the chief functions of the county commissioners for Suffolk county.²⁴ By the charter of 1909 these functions²⁵ were vested in the city council and to a certain extent in the mayor. The treasurer²⁶ and auditor of accounts of the city of Boston act as treasurer and auditor for Suffolk county. There remain, however, seven county offices²⁷ filled by popular election and a number of county positions filled by appointment²⁸ made either by the governor of the state or by the justice of the superior court.²⁹

Although the relation of Boston to Suffolk county prevents the duplication of functions and conflicts of jurisdiction, and in the main frees Boston from those annoying problems growing out of the relation of the city to the county which confront so many of our large cities, nevertheless there remain in the Boston situation certain problems which demand attention.

In the first place, the position of Chelsea, Revere and Winthrop in Suffolk county is illogical and in a degree unfair to Boston. For judicial purposes they are a part of Suffolk county; they receive the

²³ "These include the care and maintenance of the Court House . . . the buildings occupied by the Municipal and Districts Courts in Boston, and in part the police court in Chelsea; the salaries of the Judges of the Juvenile Court, the District Courts of Boston and the Police Courts of Chelsea; the salaries of clerks, court officers . . . and all other employees of all courts . . . (and) the fees of jurors and government witnesses . . ." Boston Finance Commission Report I. (1908) 389-390.

²⁴ Revised Laws, chap. 20, sec. 34.

²⁵ Acts, 1909, chap. 486, sec. 3. The bicameral city council was abolished and a single council of nine members elected on a general ticket was substituted.

²⁶ Revised Laws, chap. 21, sec. 5.

²⁷ Register of probate, register of deeds, district attorney, sheriff, clerk of the supreme judicial court, two clerks of the superior court "one for criminal and one for civil business." Acts 1907, chap. 566, sec. 346.

²⁸ Important among these are the medical examiners and the index commissioners.

²⁹ In 1910 there was a total of 596 paid county officials and employers while for the city there was a total of 13,068.

benefit but do not share the expenses of the administration of justice in the county. Boston not only pays the expenses of the supreme and superior courts in the county which are open freely to the other municipalities in Suffolk county, but she also bears the greater share of the expenses of the Chelsea police court.³⁰ Boston suffers further injustice from a general law for all counties which provides that "fines in police or district courts go to the city or town in which the offence is committed." The result of this law is that Revere and Winthrop,³¹ which contribute nothing to the maintenance of the courts, make a clear profit from the fines thus received.³² An act of the legislature in 1911, however, has for its object the elimination of this difficulty. It provides that upon application by any of the municipalities in Suffolk county the supreme judicial court shall appoint a commission to investigate and report its decision concerning the adjustment and apportionment of the county expenses among the several municipalities; and that the decree of the "court confirming the decision shall be final and binding."³³ The commission has not yet been appointed. A petition to that end has been filed by the city of Boston. But meanwhile the city of Chelsea and the town of Winthrop have pleaded the unconstitutionality of the act, and the question is scheduled for a hearing in the near future, before the supreme judicial court. It seems improbable, however, that an equitable apportionment of the county expenditures among the several municipalities of Suffolk county can be permanently delayed.

A second difficulty is the unsatisfactory system of county finances, as the Boston finance commission pointed out³⁴ in 1908. There was no legal limit upon taxation for county purposes; "no effective check on the increase of salaries and the creation of new places"; and a crude "system of estimates and appropriations" existed. Such a system resulted in an increase in county expenditures of about 97 per cent. within the fifteen years prior to 1908, in contrast to an increase of about 32 per cent. in the population, and 51 per cent. in the

³⁰ Boston Finance Commission Report, I. (1908), 432. During the year 1910-1911 Boston paid on the account of Chelsea Police Court the sum of \$12,684.47: Report of the Auditor of the City of Boston 1910-1911, p. 174.

³¹ Revere is under the jurisdiction of the Chelsea Police Court, while Winthrop is under that of the East Boston District Court.

³² Boston Finance Commission Reports, I. (1908), 434.

³³ Acts, 1911, chap. 482.

³⁴ Boston Finance Commission Reports, I. (1908), 392-403.

valuation.³⁵ The charter of 1909, however, has remedied this difficulty to a certain extent. Although there is still no legal limit on county taxation, and "new places" in county departments may probably still be created too easily since the county appointees are not subject to the civil service laws, the system of appropriations and expenditures under the new charter furnishes a much more effective check on unnecessary county expenditures than was possible under the previous conditions. The heads of county departments are obliged to submit annually to the mayor itemized estimates of the expenditures of their departments.³⁶ Such estimates are examined by the mayor³⁷ and, so far as he sees fit, are incorporated in the annual budget which is then submitted to the city council for its approval. The council may omit or reduce, but may not increase any item. The permanent finance commission furnishes another valuable check on expenditures. It is its duty to investigate and report on "all matters relating to appropriations . . . expenditures, and methods of administration affecting the city of Boston or the county of Suffolk."³⁸

Another weak spot, it is alleged, appears in the election of certain officials. Many believe that a distinct step in advance would be taken by making appointive, subject to civil service laws, the seven county offices now filled by popular election. Since their functions are either judicial or administrative rather than "policy making" it is argued that such a change would not only be in harmony with the principle of the "short ballot" but, by eliminating a number of elective offices hitherto filled by party organizations, would also further aid the city of Boston in freeing herself from the influence, in city affairs, of permanent party organizations.

The relation of both the city and the county to the problem of a united metropolitan Boston is a question of far greater interest to the citizens of the metropolitan district than are any questions growing out of the relation of the city to the county alone.

Metropolitan or "Real Boston" in contradistinction to municipal Boston comprises the area included in the metropolitan park, water and sewer districts. It has a population of a million and a half while that

³⁵ Boston Finance Commission Reports, I. (1908), 393.

³⁶ Acts, 1909, chap. 271, sec. I.

³⁷ "All appropriations . . . to be met from taxes . . . originate with the mayor." Acts, 1909, chap. 486, sec. 3.

³⁸ Reports are to be made "to the mayor, the city council, the governor or the general court." Acts, 1909, chap. 486, sec. 18.

of municipal Boston numbers only a few more than six hundred and seventy thousand. The population of metropolitan Boston is bound together by a community of interests, both economic and social. Boston is the commercial and industrial center of the whole metropolitan area, and the interests of those living in the suburban municipalities are, in the main, identical with the interests of the residents of municipal Boston. Yet within the metropolitan district there exists for purposes of government thirty-nine different municipalities, portions of five counties,³⁹ the metropolitan park commission, and the metropolitan water and sewer board, each independent of the others, and over all no official body having jurisdiction except the state legislature. And that body acts only "through the medium of artificially created districts directed by boards with narrowly restricted administrative powers and no legislative or creative functions whatever." Moreover the legislature "is crowded with state business," while "three fifths of its members live outside of 'Real Boston' and are therefore not . . . familiar with its needs."⁴⁰ Under such conditions conflict of jurisdiction has been inevitable,⁴¹ and pressing problems such as housing, transportation and industrial education have not been effectively met.

Fifteen years ago a metropolitan commission appointed by the state legislature to investigate "The subject of a general municipal administration for the city of Boston and the adjoining municipalities," submitted to the legislature a plan for bringing all the municipalities within the metropolitan district into "the boundaries of a single county." Such a county should "have larger legislative and administrative powers⁴² than counties in . . . [the] state . . . [had] hitherto possessed."⁴³ It was further proposed to eliminate the existing county boundaries and county governments within the district and vest their functions in the newly created county government, which was also to assume the functions exercised by the existing metropolitan boards. The commission suggested that such a county

³⁹ Suffolk County, containing four municipalities.

Middlesex County, containing seventeen municipalities.

Essex County, containing four municipalities.

Norfolk County, containing twelve municipalities.

Plymouth County, containing two municipalities.

⁴⁰ Pamphlet "Real Boston" issued by Boston Chamber of Commerce, Dec. 1910, p. 4.

⁴¹ Conference for Good City Government 1910, p. 549.

⁴² Report of the Metropolitan District Commission, 1896, p. 3.

⁴³ Ibid, p. 6.

should be governed by a "County Council" in which the cities and towns of the Metropolitan district should have "reasonable representation."⁴⁴ The cities and towns were to retain their autonomy and their jurisdiction in all matters of local government.

It is interesting to observe that as early as 1896 a proposal was made to solve the problem of metropolitan union by creating a county conterminous with the metropolitan district. Such plans failed of adoption partly because the state was unwilling to give up its experiments with metropolitan boards; partly because the county interests were hostile; but especially because the several municipalities feared that their local autonomy would be encroached upon.

Since 1896 the need of some form of governmental co-operation within the metropolitan district has not been lost from sight. To "federate" the cities and towns of the metropolitan district is one of the prominent purposes of the Boston-1915 movement. The agitation for the federation of metropolitan Boston is headed by the "Real Boston" committee⁴⁵ of the Boston chamber of commerce. Since the committee fully recognizes the spirit of opposition to annexation and consolidation, at present it goes no further than to recommend "a loose confederation"; that is the creation of a co-operative body composed of the representatives⁴⁶ of the thirty-nine cities and towns within the metropolitan district. Such a metropolitan council would have "advisory power only."⁴⁷ It contemplates a kind of official conference of the executives of the various municipalities which would concern itself only with intermunicipal functions. Each municipality would remain absolutely independent.

The plans of the "Real Boston" committee as well as the proposals of the "metropolitan plan commission"⁴⁸ do not at present contemplate the changing of county lines, the interfering with county government as it is now constituted, or in any way changing the relation of the county to the metropolitan district. The present division of the administration of justice in the metropolitan district among the five separate shire towns likewise would not be interfered with. In fact

⁴⁴ Ibid, p. 41.

⁴⁵ March G. Bennett of Boston is the chairman.

⁴⁶ "The mayors of all the cities and the chairmen of the boards of selectmen of all the towns."

⁴⁷ Pamphlet of "Real Boston" published by the Boston Chamber of Commerce, March 1911.

⁴⁸ Created by the Legislature, 1911.

great opposition probably would be raised to separating the shire towns (*i. e.* Dedham of Norfolk and Cambridge of Middlesex), from their counties, on account of the location there of the archives, title registries and county buildings.

Probably it would not be wise in consideration of the present state of public opinion to attempt a more radical change, than that proposed by the Boston chamber of commerce in the relation of the several governmental organizations within the metropolitan district. However it is difficult to believe that in the metropolitan district a system of county government can permanently remain, in which the antiquated county boundary lines are adapted to the conditions of 1793⁴⁹ rather than to those of to-day; in which the important county officers are not held responsible by those who elect them; and in which an undue share of the court expenses are borne by the city of Boston.⁵⁰

It does not seem at all improbable when the commercial, industrial and social interests of metropolitan Boston have brought about the federation of that district for the purposes of government that the federation will from time to time have assigned to it additional matters relating to metropolitan administration and that county administration and county boundaries will in time conform to the needs of the metropolitan district.

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⁴⁹ When the last general revision was made.

⁵⁰ This results from the fact that an increasingly large part of the court cases of Essex, Norfolk, and Middlesex counties are tried in the Suffolk county, since it better suits the convenience of many litigants and especially the attorneys whose offices are located in Boston.